



A

B I L L,

INTITULED,

AN ACT to facilitate the Sale of Incumbered Estates in Ireland.

WH^{EREAS} it is expedient to grant facilities for the Sale of Estates situate in that part of the United Kingdom of Great Britain and Ireland called Ireland which may be charged with Incumbrances, as after mentioned; **BE** it therefore **Enacted**, by The **QUEEN's** most Excellent **MAJESTY**, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, **THAT** in the construction of this Act (except where the context or other provisions of the Act require a different construction) the word "Land" shall extend to manors, advowsons, rectories, messuages, lands, tenements, rents and hereditaments of any tenure, and whether corporeal or incorporeal, and any undivided share thereof; and the word "Estate" shall extend to an estate in equity as well as at law, and to the benefit of any covenant or contract for or right of renewal; and the word "Lease" shall include an agreement for a lease, and the estate or interest created or agreed to be created by such lease or agreement in the whole or any part of the land therein comprised; and the expression "Lease in Perpetuity" shall mean any lease for one or more life or lives, with or without a term of years, or for years determinable on one or more life or lives, or for years absolute, with a covenant or agreement in any of such cases, whether in the same or in any other instrument, for the perpetual renewal of such lease; and the word "Incumbrance" shall mean any legal or equitable mortgage in fee, or for any less estate, and also any money secured by a trust, or by judgment, decree or order, and also any legacy, portion, lien or other charge, whereby a gross sum of money

Preamble.

1.
Construction of terms, &c. in this Act.

"Land."

"Estate."

"Lease."

"Lease in Perpetuity."

"Incumbrance."

	is secured to be paid on an event or at a time certain, and also any annual charge which by the instrument creating the same, or by any other instrument, is made re-purchasable on payment of a gross sum of money; and the word "Incumbrancer" shall mean any person entitled to or interested in such incumbrance; and the word	5
" Incumbrancer."		
" Possession."	" Possession " shall include the receipt of the rents and profits; and the word " Owner," as applied to any land, shall include any person entitled in possession absolutely or in tail, or quasi entail, and any person not being a lessee at a rent entitled in possession for a life or lives, or for a term of years determinable on the dropping of any life	10
" Owner."	or lives, or for a term of years of which not less than Ninety-nine Years are unexpired, and also any person entitled in possession as tenant by the curtesy, whether at law or in equity, and any person entitled in possession to the equity of redemption or the property subject to the incumbrance in any land, whether in fee or for any lesser estate as aforesaid, and being in receipt of the rents and profits, and any	15
	feoffees or trustees for charitable or other purposes, being in receipt of the rents and profits; and the word " Owner," as applied to a lease in perpetuity or other lease shall include any person not being an under lessee at a rent entitled in possession to all or any part of the land comprised in such lease for the whole estate created or agreed to be created by such lease, or for any derivative estate (created by settlement, or testamentary or other disposition thereof), quasi in tail for life or lives, or for years determinable on the dropping of a life or lives, or for years of which not less than Fifty Years are unexpired, and any person entitled in possession to the equity of redemption, or the property subject to the incumbrance in any such lease in perpetuity or other lease, absolutely, or for any such derivative estate as aforesaid; and the word " Person " and the word	20
" Person " and " Owner."	" Owner " shall extend to a body politic or corporate as well as to an individual; and the word " Month " shall mean calendar month; and the word " Court " shall mean the High Court of Chancery in Ireland; and the word " Master " shall mean the Master for the time being having the conduct of the reference; and every word importing the singular number only shall extend to several persons or things, and every word importing the plural number shall apply to one person or thing; and every word importing the masculine gender only shall extend to a female; and words importing sale and selling shall include the carrying into execution any contract for a sale under the provisions of this Act; and where any act is authorized or directed to be done by or with respect to any person, or any consent is authorized to be given by any person, such act or consent may be done or given by the guardian of such person being an infant, or by the committee of the estate of such person being an idiot or lunatic, or by the husband of such person being a married woman (except that a married woman entitled to any land, estate	25
" Month."		30
" Court."		
" Master."		
Number.		35
Gender.		
Sale and Selling.		40
Infant.		
Lunatic.		
Married Woman.		

estate or incumbrance for her separate use for life, or for any greater estate, with or without power of anticipation, shall for the purposes of this Act be considered as a feme sole); and this Act shall operate as well with respect to any estate or incumbrance created before the passing of this Act as with respect to any estate or incumbrance to be hereafter created.

And be it Enacted, That where any land in Ireland shall be subject to any incumbrance, it shall be lawful for the owner of such land to contract (subject to the approbation of the Court) for the sale thereof, freed from all incumbrances, for any sum of money which shall be sufficient to pay off all incumbrances affecting the same, and such sale, if approved by the Court, shall be carried into effect under the provisions of this Act; and that any such owner, or any person being the first incumbrancer on any such land, or any person being an incumbrancer on any such land in possession of the title-deeds and writings relating thereto, without having so contracted, may apply to the Court for the sale of such land under the provisions of this Act; and for the purposes of this Act the land shall be deemed subject to an incumbrance where the same shall affect any term or estate of not less than Fifty Years unexpired at the time of the application, unless such incumbrance shall have been created by the owner of a particular estate or interest less than an estate of inheritance, and shall be charged only upon such particular estate or interest, and any incumbrance charged under a power created by the owner of an estate of inheritance shall be deemed to have been created by such owner.

2.
Where Land, &c. in Ireland is subject to Incumbrance, Owner may, subject to the approbation of the Court of Chancery, contract to sell the same.

Lands to be deemed subject to Incumbrance where same shall affect any Term or Estate of 50 years unexpired at time of application to Court.

And be it Enacted, That where any lease in perpetuity of land in Ireland, or any lease of land in Ireland for a term whereof not less than Sixty Years shall be unexpired at the time of such application as hereinafter mentioned, shall be subject to any incumbrance, it shall be lawful for the owner of such lease in perpetuity or other lease as aforesaid to contract, subject to the approbation of the Court, for the sale thereof, freed from all incumbrances, for any sum of money which shall be sufficient to pay off all incumbrances affecting the same, and such sale, if approved by the Court, shall be carried into effect under the provisions of this Act; and that any such owner of a lease in perpetuity or other lease as aforesaid, and also any person being the first incumbrancer on any such lease in perpetuity or other lease as aforesaid, or any person being an incumbrancer on any such lease in perpetuity or other lease as aforesaid, and being in possession of the title-deeds and writings relating thereto without having so contracted, may apply to the Court for the sale of such lease in perpetuity or other lease as aforesaid, under the provisions of this Act; and for the purposes of this Act such lease in perpetuity, or other lease as aforesaid, shall be deemed

3.
Life Power as to Leases in Perpetuity and long Terms.

deemed subject to an incumbrance, although the same shall affect a derivative estate or interest only, or less than the whole estate created or agreed to be created by such lease in perpetuity or other lease as aforesaid, in case such incumbrance shall have been created by the owner of or person entitled to the whole estate created or agreed to be created by such lease in perpetuity or other lease as aforesaid, and any incumbrance charged under a power created by the owner of or person entitled to such whole estate as aforesaid shall be deemed to have been created by such owner or person so entitled.

4.
Owner, &c.
having con-
tracted for
Sale, may
apply to the
Lord Chan-
cellor of Ire-
land to con-
firm the Sale
or contract
for Sale.

And be it Enacted, That every such owner having contracted for sale as aforesaid, and every such owner or such first or other incumbrancer being desirous to sell as aforesaid, may apply by petition in a summary way to the Lord Chancellor of Ireland for the confirming and carrying into effect such contract for sale, or for the sale of such land or lease, as the case may be; and every such petition, and every subsequent petition and other proceeding arising out of the same, shall be entitled "In the Matter of the Act to facilitate the Sale of Incumbered Estates in Ireland," ex parte the person who shall have presented such petition.

5.
Petition to set
forth incum-
brances, &c.,
and to be
verified.

And be it Enacted, That every petition for the confirming and carrying into effect such contract for sale, or for the sale of such land or lease in perpetuity or other lease as aforesaid, shall set forth the estate or interest of the petitioner in such land or lease in perpetuity or other lease as aforesaid, and the uses or limitations and the trusts, if any, to which the land or lease stands limited or settled, and the incumbrances or other charges affecting the same respectively, including the Crown rents and quit rents, if any, and the leases or under leases or tenancies, if any, subject to which such land or lease is contracted or proposed to be sold, and such petition shall be verified as the Court shall direct or approve.

6.
Lord Chan-
cellor, &c. of
Ireland may
make Rules,
&c. for carry-
ing this Act
into effect.

And be it Enacted, That it shall be lawful for the Lord Chancellor of Ireland, with the advice and consent of the Master of the Rolls in Ireland, from time to time to make any rules or orders which may be considered expedient for the better carrying this Act into effect, and for the conduct of the proceedings to be taken under this Act, and in order that the same may be done with the least cost, and as speedily as may be consistent with a due observance of the provisions hereof, and also for fixing the fees to be paid upon any proceedings, so that such fees shall never exceed such as are or may be lawfully received on similar matters: Provided always, That such rules and orders shall be laid before both Houses of Parliament within One Month from the making thereof, if Parliament be then

Rules, &c. to
be laid before
Parliament.

then sitting, or, if Parliament be not then sitting, within One Month from the commencement of the then next Session of Parliament; and any rule and order so made shall from the making thereof for all purposes be deemed and taken to be a general rule and order of the Court.

Provided always, and be it Enacted, That it shall be lawful for the Lord Chancellor of Ireland, with the advice and consent aforesaid, from time to time, in like manner and subject to the like provision as aforesaid, to make any rules or orders rescinding or altering any former rules or orders.

7.
Lord Chancellor, Sec.
may alter
Rules from
time to time.

And be it Enacted, That upon the presentation of such petition as aforesaid it shall be lawful for the Court, either by an ex parte order or on notice to such parties as it may consider ought to have notice, to refer it to one of the Masters of the Court to inquire as to the estate or interest (if any) of the petitioner in such land or lease, and as to the uses or limitations and trusts, if any, to which such land or lease stands limited or settled, and as to the incumbrances and other charges affecting the same (including as well such as are claimed by the parties who shall come in under the said order as all such others as shall appear from the title-deeds or on search or otherwise, as far as the same can be ascertained, and including also debts and incumbrances and other charges due or belonging to Her Majesty, Her heirs and successors), and as to the persons entitled under such uses or limitations and trusts, and the persons in whom such incumbrances and charges shall be vested, and as to the order and priority of such incumbrances and charges, and the amount due thereon respectively, distinguishing principal monies from interest, and making all just allowances, and in case of a mortgagee or other creditor in possession taking all just accounts, and with or without rests, as shall be just, and as to the value of the land or lease which shall have been contracted or shall be desired to be sold, and also whether any such incumbrances or charges shall affect any land or estate other than the land or lease which shall have been contracted or be desired to be sold, and whether such other land or estate shall be liable in priority or in equal degree or in posteriority, and as to the title to the land or lease contracted or desired to be sold, and to the incumbrances, and as to the expediency of sale, and if a part only of any incumbered land or lease shall have been contracted or be desired to be sold, whether such part shall be proper to be sold, or to make such of the above inquiries, and to make such other inquiries relating to or affecting such land or lease, and the incumbrances and charges thereon, as the Court shall think requisite, and to report upon the same; and the Master shall have authority to direct

8.
Upon presentation of
petition for
sale, the Court
may refer the
same to a
Master in
Chancery,
who shall in-
quire into the
particulars of
the same, and
report upon
the same.

searches

searches to be made for judgments, and searches of the registry, and in all other places, and inquiries as to the identity of any person or property; and in such report the Master may state any circumstances specially as the Court shall direct or as he shall see fit; and the Master shall be at liberty, at his discretion, or by order of the Court, to make a separate report as to any of the matters referred to him; and for any of the purposes of this Act the said Court shall have power to compel the production before the Master of all deeds and other writings relating to any property in question: Provided always, That no mortgagee or incumbrancer, being in possession of any title-deeds or writings of or relating to any property (and showing right to hold the same as a security for his debt or charge), shall be compellable to produce the same, unless or until it shall have been ascertained by the report of the Master that the money to be produced by the sale of the property, and applicable to the payment of such debt or charge, will be sufficient to pay the same; but such mortgagee or incumbrancer shall, on the order of the Court, furnish copies or abstracts of any such deeds or writings; and in every case in which such mortgagee or incumbrancer having right as aforesaid shall be required to produce such deeds or writings, or to furnish such copies or abstracts, the reasonable costs and charges of such production, or such copies or abstracts as aforesaid shall be previously paid or tendered by the party requiring the same, or otherwise, as the Court shall direct; and all orders for the production and for the furnishing of copies and abstracts of any such deeds or writings may be made on persons residing or being in England, or elsewhere, out of the jurisdiction of the Court; and all notices to be given or served under any of the provisions of this Act may be given and served in England, or elsewhere, out of the jurisdiction of the Court; and the powers, provisions and directions of an Act passed in the forty-first year of the reign of his late Majesty King GEORGE the Third, intituled, "An Act for the more speedy and effectual Recovery of Debts due to His Majesty, His Heirs and Successors, in Right of the Crown of the United Kingdom of Great Britain and Ireland, and for the better Administration of Justice within the same," shall extend and be applied to all orders to be made by the Court under this Act.

41 G. 3, c. 50.

9.
Attorney-
general for
Ireland, by
himself or
Deputy, to
assist in the
investigation
before the
Master.

And be it Enacted, That for the purpose of protecting, as far as possible, the rights and interests of all persons interested in any such land or lease who may not have become parties to the proceedings under this Act, it shall be lawful for the Master, where he shall think fit, to appoint a solicitor to assist him in making the inquiries by this Act directed to be made, and in conducting and carrying on the several proceedings to be had and taken upon every such reference to him as aforesaid; and that the costs of such solicitor

solicitor shall in all cases be charged upon and paid out of the estate.

And be it Enacted, That all the laws, rules, orders, discretionary powers and practice in force, or which shall be in force with respect to proceedings in the Court in a suit for foreclosure or redemption of a mortgage, and under a decree for sale of estates for payment of incumbrances or debts, not being inconsistent with the provisions of this Act, or with any rule or order to be made by the Lord Chancellor of Ireland as aforesaid, shall apply to the several proceedings under this Act, so far as circumstances will admit; and all such proceedings by way or in the nature of further directions and otherwise, in case of a sale under this Act, shall and may be had and taken as in case of a decree for sale as aforesaid, so far as is consistent with the provisions of this Act, and as circumstances will admit; and in every proceeding under this Act, the Court shall (except in the case hereinbefore mentioned and provided for) have full power and discretion as to the giving or withholding costs and expenses, and as to the persons by whom and the funds out of which the same shall in the first instance or ultimately be paid, repaid and borne, and shall and may apportion the same amongst such parties, and in respect of interest or principal, and in respect of rents or income and corpus, as it shall see fit; and that under every reference which shall be made to the Master under any of the provisions of this Act, he shall, so far as may be consistent with the provisions of this Act, or with any rule or order to be made by the Lord Chancellor of Ireland as aforesaid, or with any special order of the Court under this Act, proceed in like manner and with the like powers and authorities in all respects, and all orders and proceedings of and before the Master shall be enforceable in like manner as in case of a reference made to the Master under such decree as aforesaid, so far as circumstances will admit; and all persons who shall become parties to any proceedings under this Act, by contracting for the purchase of any land or lease, or by making any application to the Court, or by submitting to the jurisdiction of the Court, or by attending before the Master in the course of such proceedings, or by otherwise concurring in any such proceedings, and the representatives of such persons, and all persons claiming under them, by their act or by act of law subsequent to their becoming subject, as next hereinafter mentioned, shall for the purposes of this Act be subject to the jurisdiction of the Court, and to all orders of the Court and of the Master, in the course of any such proceedings, in like manner and as fully as parties to a cause pending in the Court are subject to the jurisdiction of the Court in such cause.

10. Rules, &c. in force with respect to certain proceedings for payment of Incumbrances, &c. not inconsistent with this Act, or any rules made under the same, shall apply to proceedings under this Act.

Court to apportion Costs as it may think fit.

All persons becoming parties to be subject to the jurisdiction of the Court, &c.

Provided always, and be it Enacted, That it shall not be necessary for any person thinking himself aggrieved by any report of the Master

11. Persons feeling aggrieved by report of the Master

Master, not
compelled to
take excep-
tions to the
same.

Master to take exceptions to such report; but it shall be incumbent on all persons, parties to proceedings, or coming in before the Master, to carry in objections, in the usual manner and in the usual cases, to the draft of the report, in case they shall think themselves aggrieved thereby; and any such person omitting so to object in such cases shall not afterwards be heard against the report without special leave of the Court; and every proceeding before the Court under this Act shall be carried on by petition or motion in a summary way, or as the Court may from time to time order; and proceedings under this Act shall not abate nor be suspended by any death, transmission or change of interest, except so far as it shall be deemed necessary for the carrying on of any such proceedings that any person not before the Court shall have notice of or be required to attend such proceedings.

12.
In case of
death, &c.
parties inter-
ested may
apply to the
Court to
carry on pro-
ceedings.

And be it Enacted, That in case of death or transmission or change of interest, and wherever, after the presentation of a petition for confirming and carrying into effect a contract for sale, or for a sale under this Act, the direction of the Court shall be requisite for carrying on the proceedings under the same, or for effecting the objects thereof, or otherwise relative thereto, it shall be lawful for any person interested in such proceedings to apply to the Court for an order for any such purpose, and it shall be lawful for the Court to make such order on any such application as it shall see fit.

13.
When, upon
a Petition, &c.
a Reference
shall have
been made to
the Master, he
shall cause
the same to
be published
by Advertis-
ements.

And be it Enacted, That when, upon a petition for confirming and carrying into effect a contract for sale, or applying for a sale, any reference shall have been made to the Master as aforesaid, he shall cause an advertisement to be published at least Once in Two successive Weeks in the Dublin Gazette, and in such daily or other journals or newspapers in Ireland or England, or both, as the Master shall think fit, stating the name and addition or title of the petitioner, and in case the petitioner shall not be the owner, the name and addition or title of the owner, and the denomination or short description of the land or lease contracted or desired to be sold, and the county wherein the same shall be situate, and any other matters as the Master may think fit, and fixing a day whereon the Master will enter upon the consideration of the matter referred to him, and requiring all persons having incumbrances to come in and prove them.

14.
Error in Ad-
vertisement
not to vitiate
Proceedings.

Provided always, and be it Enacted, That no error or imperfection in any such advertisement as aforesaid shall vitiate the proceedings under any such reference, unless the Court, upon application made to the same, or otherwise in the course of proceedings under such reference, shall determine that it ought so to do.

And

15.
Master, before
proceeding,
&c. shall
cause Notice
to be given
to all Persons
who shall
appear to have
interest in the
subject of
inquiry.

And be it Enacted, That the Master, before proceeding upon any of the inquiries directed by any such reference, and also from time to time under such reference, or under any further reference made to him in the same matter, as and when by reason of any interest appearing to exist in any of the subjects of the inquiries referred to him it shall seem to him fitting, shall cause notice to be given, as and in such form as he shall think proper, to all persons who shall appear to him to have any interest in any of the subjects of such inquiries, and whose attendance before him shall appear proper, that he is about to proceed or that he is proceeding in the matter of such reference; and all notices under this Act may be served out of the jurisdiction of the Court, and it shall be lawful for the Court to direct substituted service thereof in any case in which it shall so think fit; and in case any incumbrancer or party interested, having been served with any such notice, shall omit or neglect to appear in the Master's office, or to file or carry in a charge, it shall be lawful for the Court, on the application of any party, to make an order in open Court on motion of course that such incumbrancer or party shall be bound by the proceedings as if he had been a party thereto, or such other order as the Court shall think fit, and thereupon it shall be lawful to proceed notwithstanding the absence of such party; and if it shall appear to the satisfaction of the Master that any person to whom in his judgment notice ought to be given cannot be found, or cannot be in any manner served with notice, it shall be lawful for the Master to state in his report the name of such person, and the circumstances under which notice was not or could not be given to him: Provided nevertheless, That after such order made, it shall be lawful for the Master at any time, in his discretion, to admit, and for the Court, on such terms as it shall think proper, to order him to admit, any party against whom such order shall have been made to attend and proceed before him as if no such order had been made: Provided also, That the parties against whom such order shall have been made shall not thereby be excluded from sharing in the proceeds of such sale, under the direction of the Court, or from any other benefits of this Act, consistent with the full effect of such order, or with such directions as the Court shall think proper at any time to make.

And be it Enacted, That from and after the passing of this Act it shall be lawful for any person claiming any interest in any land or lease in Ireland, to enter a caveat in the office of the Registrar of the Court against the sale of such land or lease under the provisions of this Act; and such person shall thereupon and thereby be entitled to and shall have and receive such notice as heretofore directed of all proceedings to be taken upon any reference under this Act relating to the land or lease mentioned in such caveat, or any part thereof.

16.
Persons
claiming an
interest in any
Land, &c.
may enter
a Caveat in
the Registrar's
Office, and
shall be
thereby en-
titled to
Notice.

17.
All Persons
claiming
under Re-
ference to
appear before
the Master,
who shall in
his Report
state by
whom he has
been attended,
&c.

Omission of
the Master to
give Notice
not to vitiate
Proceedings.

18.
Persons who
have been
disallowed
from attend-
ing before the
Master, or
complain-
ing of any Cer-
tificate, &c.,
may apply to
the Court
against such
Disallow-
ance, &c.

19.
Directions of
this Act as to
Proceedings
to have the
force of
Orders of the
Court.

20.
Court not
to direct a
Sale without
consent of In-

And be it Enacted, That it shall be lawful for all persons claiming any interest in any of the subjects of such inquiries, by themselves or by their solicitors, in the usual manner to appear before the Master under any reference under the powers of this Act, and to claim to take a part in the proceedings under the reference, or in any of them, and the Master shall have power to determine what parties shall and may attend before him and take a part in the proceedings under the reference, or in any of them, and upon what terms; and the Master in his report under any such reference shall state by what persons he has been attended in such proceedings, or in any of them, and also what (if any) persons, and in respect of what inquiries, he has prohibited from attending before him, and also what (if any) persons shall after notice to them as aforesaid have neglected or omitted to attend before him: Provided always, That no omission of the Master to cause any such notice as aforesaid to be given shall vitiate any proceedings before the Master, unless the Court, upon application made to the same or otherwise, in the course of proceedings in the matter in which such reference shall have been made, shall determine otherwise.

Provided always, and be it Enacted, That it shall be lawful for any person whose attendance before him the Master shall have disallowed, and also for any person complaining of any act or proceeding of the Master in any case not otherwise specially provided for, or requiring the direction or order of the Court in any proceeding before the Master, to apply to the Court against such disallowance, act or proceeding, or for such direction or order, but so that no such application complaining of any disallowance, act or proceeding of the Master shall, without special leave of the Court, be made, unless within Fourteen Days after the act or proceeding complained of, if the Court be then sitting, and if the Court shall not be then sitting, unless notice of such intention to apply at the sitting of the Court be given within Fourteen Days to the party petitioning for such sale as aforesaid.

And be it Enacted, That all the directions in this Act contained as to proceedings before the Master and in Court shall have such and the same force and effect as if the same were orders of the Court, and the Court shall have such and the same powers and authorities in relation to all such proceedings, and in relation to the costs of or incident thereto, as the Court would have if such directions were orders of the Court, and were not expressly contained herein.

And be it Enacted, That the Court shall not direct a sale of any land or lease without the consent of the incumbrancer, or, if there be more than One, of the incumbrancer from whose incumbrance

brance the land or lease to be sold is desired to be freed, unless, having regard to the amount of the incumbrance or incumbrances and the estimated value of the land or lease, the Court shall consider the produce of the land or lease to be sold sufficient to pay the principal and all arrears of interest of the incumbrance from which the land or lease is desired to be freed (or, in case such incumbrance shall consist of a re-purchaseable annual charge, the Court shall consider such produce sufficient to pay for such re-purchase, and all arrears of the charge), and also the costs and expenses of such incumbrancer, and any other costs and expenses which the Court shall think ought to be defrayed out of the purchase money, or unless, in the case where there are several incumbrances upon any land or lease, part of which only is desired to be sold for the purpose of discharging one or more of such incumbrances only, and not the whole thereof, the owner or some subsequent or other incumbrancer shall undertake to pay to the incumbrancer from whose incumbrance the land or lease is desired to be freed any deficiency which may exist, and shall give such security for the performance of his undertaking as the Court shall approve; and for the purpose of facilitating any such sale the Master may compute the arrears of interest up to such future day as he shall think fit, and also may fix upon and ascertain a sum to meet all such costs and expenses as aforesaid.

And be it Enacted, That when any incumbrance shall be subject to any limitations of estate or interest, or shall be held upon any trust, the first person entitled to the income of such incumbrance, or the trustee or other person whom the Court may think fit, shall be the person to give the required consent to a sale in respect of such incumbrance.

incumbrance,
except in
certain cases.

And be it Enacted, That where any person who shall be entitled to any charge not being an incumbrance within the meaning of this Act (including any such apportioned charge as hereinafter mentioned) shall be willing to accept a gross sum in satisfaction of such charge, it shall be lawful for the Master, if he shall think fit, to treat and to include in his report such charge as an incumbrance within the meaning of this Act; and that where any land or lease, a part only of which shall be contracted or desired to be sold, shall be subject to any such charge not being an incumbrance as aforesaid, or to any incumbrance from which the land or lease contracted or desired to be sold shall not be otherwise freed or discharged under the provisions of this Act, it shall be lawful for the Master, if he shall see fit, to approve of the part not contracted or desired to be sold of such land or lease being charged with such charge or incumbrance in exoneration of the land or lease contracted or desired to

21.
When Incumbrance shall be subject to limitations, the first Person entitled, &c. shall be the Person to give consent to a sale.

22.
Where any Person shall be entitled to any charge, &c., Master may treat, and include in his Report, such charges as an Incumbrance.
As to the sale of any land, &c. a part only of which shall be desired to be sold.

be sold, or to approve of an apportionment of such charge or incumbrance between the land or lease to be sold and the residue of the land or lease subject thereto, with the consent in either case of all parties interested in the part of such land or lease not contracted or desired to be sold, and to include such matters in his report: Provided nevertheless, That a sale may be made under this Act before all the accounts of incumbrances are taken, or the rights of incumbrancers ascertained, if the Court shall on special application so direct.

23.
Report of the
Master and all
other Reports,
&c. to be filed
according to
the Rules of
the Court.

And be it Enacted, That the report of the Master as to the expediency of sale, and all other reports, affidavits, orders and other proceedings under this Act, shall, so far as consistent with the provisions of this Act, or with any rule or order of the Court or of the Lord Chancellor of Ireland, to be made as hereinbefore provided, be filed according to the rules and practice of the Court in causes or matters pending in the same, so far as such filing would, as to masters of the like nature, be thereby required, and as circumstances will admit; and that at the expiration of Fourteen Days after the filing of the report, as to parties who shall have appeared before the Master, and as to all other persons at the expiration of One Month after the filing of any report approving of a sale, if no application shall be made or shall be pending before the Court, complaining of such report, or of any proceedings of the Master under the reference under which such report shall have been made, it shall be lawful for the Court, upon the application of any party interested in such report (and without the attendance of counsel, unless the Court shall see fit to direct such attendance of counsel), to confirm the report absolute, and to direct or authorize a sale to be made by the Master, and that after confirmation of such report absolute it shall not be lawful for any person to make any application complaining of the same without special leave of the Court.

24.
Order for Sale
may include
the whole or
part of the
incumbered
Land, &c.

And be it Enacted, That any order for sale to be made by the Court under this Act may include the whole or any part or parts of the incumbered land or lease, and may provide that the land or lease, or the part or parts thereof to be sold, shall remain subject to any incumbrance which the Court shall think fit; and such order shall specify the land or lease, or the part or parts thereof which shall be directed or authorized to be sold, and also the incumbrances and charges (if any) to remain charged on the land or lease to be sold, and also the incumbrances and charges (if any) to remain charged on any land or lease, or part or parts thereof, not included in the sale, and whether such incumbrances and charges respectively are to be charged on any such land or lease, or part thereof exclusively, or in common with any other land or lease or part thereof, and whether

whether with priority of charge, or liability in respect of any such land or lease, or part thereof, or otherwise, and all such other matters incident to the sale as the Court shall think fit.

And be it Enacted, That it shall be lawful for the Court to order the whole of any incumbered land or lease to be sold, although the Master shall have approved of the sale of a part thereof, or to order a further or other part or further or other parts thereof to be sold than what the Master shall have approved, and to alter or vary such report, and the plan or scheme therein contained, and to confirm such report, subject to such variations, without any further reference to the Master.

25.
Court may order the whole of an estate to be sold, although the Master shall have approved of the sale of a part only.

And be it Enacted, That, previously to making any order for sale, it shall be lawful for the Court to make any order of confirmation of the report Nisi, and to direct service of such order on any person or persons, and also that it shall be lawful for the Court, in the course of any proceedings under this Act, to direct any reference back or farther reference to the Master to review such report or otherwise, and upon any terms and with any directions, as the Court shall think fit.

26.
Previously to making Order for Sale, Court may confirm the Report Nisi, and direct service of the same, &c.

And be it Enacted, That the assurance of the land or lease sold shall be made in such form in all respects as the Master shall direct, and that the Master shall execute the same, and execution thereof by any other party shall not be necessary for the validity thereof, nevertheless it shall be lawful for the Master to direct or authorize any other persons to execute the same, for the purpose of covenanting for title, or for the production of title-deeds and evidences, or otherwise; and the assurance shall be made to the purchaser, his heirs, executors, administrators and assigns, as the case may be, or as he shall direct; and in case the assurance so executed shall be a conveyance upon a sale of land under this Act, the same shall be effectual to pass the land thereby expressed to be conveyed, and the fee-simple and inheritance thereof, to the uses and in manner therein limited and expressed, discharged from all former and other estates, rights, titles, charges and incumbrances whatsoever of Her Majesty, Her heirs and successors, and of all other persons whomsoever, save and except such charges and incumbrances, if any, as shall be thereby excepted, or expressed to be or to remain charged upon such land, and except also as hereinafter provided; and in case such assurance shall be a conveyance or assignment of a lease in perpetuity or other lease as aforesaid, such assurance shall be effectual to pass the estate created or agreed to be created by such lease then remaining unexpired, subject to the rent and covenants annexed to the reversion expectant on the determination

27.
Assurance of Land sold to be made in such form as the Master shall direct, &c., and to vest the Estate absolutely in the Purchaser.

determination of such lease, but discharged from all rights, titles, charges and incumbrances whatsoever affecting the leasehold title or interest, save and except such charges and incumbrances, if any, as shall be thereby excepted, or expressed to be or to remain charged upon such leasehold estate or interest, and except also as herein-
after provided. 5

28.
Saving of
rights of
Lessee, &c.

Provided always, and be it Enacted, That no such assurance as aforesaid shall prejudice or affect the rights of any lessee, tenant or occupier in possession, nor the rights of any lessee or underlessee at a rent, subject to whose lease or under lease the petitioning owner or incumbrancer applying to the Court under this Act shall be an owner or incumbrancer, nor any right of common, nor any right of way or other easement, nor any rent-charge in lieu of tithes, crown rent or quit rent, charged or issuing out of any land, except in respect of the apportioned part, if any, of any such rent-charge, crown rent or quit rent from which the same shall be expressed to be discharged by such conveyance under the provisions herein contained. 10 15

29.
Purchase-
money arising
on any sale
to be paid into
the Bank of
Ireland.

And be it Enacted, That, subject as hereinafter mentioned, the purchase money to arise on any sale shall be paid into the Bank of Ireland in the name and with the privy of the Accountant-General, to be placed to his account there in the matter of "The Act to facilitate the Sale of Incumbered Estates in Ireland," ex parte as aforesaid, to the credit of the matter of such sale, in the name of the Master who shall execute the assurance, or as the Court shall direct, and the same shall be paid out or applied by order of the Court from time to time made upon petition to be preferred in a summary way by any person entitled under the provisions of this Act. 20 25

30.
Receipt of
Accountant-
General to be
a sufficient
discharge.

And be it Enacted, That the receipt of the Accountant-General aforesaid, or of such other person as the Court shall from time to time appoint to receive any monies paid under the provisions of this Act, shall be a sufficient discharge for the same, or for so much thereof as shall in such receipt be expressed to be received. 30

31.
Where it
shall appear
that there is
more than one
Incumbrance,
Court may
direct Pro-
ceedings to be
instituted to
ascertain
priority of
the same.

Provided always, and be it Enacted, That in any case where it shall appear that there are more incumbrances than one affecting any land or lease which shall have been contracted or desired to be sold as aforesaid, and any doubt shall in the opinion of the Court exist as to the order and priority of such incumbrances, and in any case in which the Court shall consider an issue or a suit or action expedient for ascertaining or determining the rights of parties in the land or lease or incumbrance, it shall be lawful for the Court at any time, and either before or after the sale, to direct any proceedings 35 40

ceedings to be instituted at law or in equity, for the purpose of ascertaining the same, and to make any rules or directions relative to such matters as it shall see fit.

And be it Enacted, That the surplus of the purchase money to be received on any sale shall be laid out, under the direction of the Court, in the purchase of other land, which shall be limited and settled to the same uses, upon the same trusts, for the same purposes, and in the same manner as the land sold stood settled or limited to, or such of them as shall be then subsisting or capable of taking effect; or such monies may, at the discretion of the Court, be paid out of Court to and distributed amongst the parties who shall appear entitled thereto, as the Court shall direct; and all such monies may in the meantime be paid over to trustees, to be appointed by the Court, or in such manner as it shall direct, for the purpose of such investment thereof, and in such manner as shall be directed by the Court.

32.
Application
of Surplus
of Purchase-
money.

And be it Enacted, That any money so paid into Court may by order of the Court be invested by the Accountant-General of the said Court in his name in the purchase of any stocks, funds or annuities transferable at the Bank of Ireland; and until the same shall be sold by order of the Court for the purposes of this Act, and after payment of such incumbrances as aforesaid, the dividends thereof shall from time to time be paid to the person who for the time being would have been entitled to the rents of the land to be purchased therewith.

33.
Money paid
into Court
may be in-
vested in the
Funds.

And be it Enacted, That whenever the Court shall appoint or shall direct the appointment of any trustee for the purposes of this Act, it shall be lawful for the Court to make or to direct to be made such provision as it shall think fit for the appointment of new trustees on any event to be determined by the Court.

34.
Appointments
of new
Trustees.

Provided always, and be it Enacted, That where any annual charge, not being an incumbrance within the meaning of this Act, shall affect any land or lease to be sold under the provisions of this Act, being part of an estate affected by such annual charge, it shall be lawful for the person entitled to such charge, with the approbation of the Court, and with the consent of all parties interested in the remaining part of such estate, to release the land or lease to be sold from such charge, without impairing or affecting the same charge as to the remaining part of such estate, and the form of such release shall be approved by the Master, and may be included in the aforesaid assurance; and if any person so entitled shall be willing to execute such release, it shall be lawful for the Master to state such matter in his report.

35.
Where any
annual
Charge, not
being an
Incumbrance
under this
Act, shall
affect any
Land to be
sold, the Per-
son entitled to
such Charge
may release
the same, &c.

36.
Parties to whom the surplus of Purchase-money is paid out of Court, shall be liable to repay the Money to Parties paying a better title to the Estate sold.

Court may require Security for such repayment.

And be it Enacted, That every person to whom the surplus of purchase money received on any such sale shall be so paid out of Court as aforesaid shall and he is hereby declared to be liable to refund and repay the same, or so much thereof as he shall have received, unto and amongst the person or persons who shall, upon a suit to be instituted for that purpose, prove to the satisfaction of the Court that he or they had at the time of such sale a better title to the land or lease so sold as aforesaid, and in respect whereof such purchase money was received, than the person or persons to or amongst whom such surplus of purchase money shall have been so paid out and distributed as aforesaid; and every such repayment shall be made to such persons, and at such time, and in such proportions, manner and form respectively, as the Court shall direct: Provided always, That it shall be lawful for the Court, before or upon the payment out of Court of any such surplus of purchase money as aforesaid, to require and take from any person to whom or for whose benefit the same or any part thereof shall be so paid out of Court such security for the repayment of such money as to the Court in its discretion shall seem fit.

37.
No payment towards discharge of an Incumbrance, not being payment in full, shall affect any right of Incumbrancee for this Balance.

Provided always, and be it Enacted, That no payment towards discharge of what shall be due on any incumbrance not being payment in full shall prejudice or affect any right or remedy of the incumbrancer, otherwise than as against the land or lease sold, freed and discharged from such incumbrance, unless so far as by the provisions of this Act, or by any general rule or order or special rule or order of the Lord Chancellor of Ireland or of the Court, pursuant to this Act, is or shall be otherwise specially provided.

38.
Where Incumbrance shall be satisfied by payment out of any Sale, &c., and other Persons or Tenants are liable, Court may order Proceedings to be instituted on such terms as it may think fit, &c.

Provided always, and be it Enacted, That where any incumbrancee shall be satisfied, wholly or in part, by payment out of any monies arising from any sale under the provisions of this Act, and it shall appear or be shown to the Court that any person whosoever, or any land or estate (wherever situate) other than the land or lease sold, was liable to such incumbrance or any part thereof, and that any such person or land or estate ought to discharge or contribute towards the discharge of such incumbrance or any part thereof in exoneration of the land or lease sold, it shall be lawful for the Court, if it shall see fit, to order that any proceedings shall or may be instituted by such person, on such terms and in such manner as the Court shall think fit, for recovering the money which ought to be so discharged or contributed in exoneration as aforesaid, and to direct that any such money shall be paid into the Bank of Ireland in the name and with the privity and to the credit aforesaid, or as the Court shall direct, to be paid, applied and dealt with in manner aforesaid, or as the Court shall direct.

Provided

Provided always, and be it Enacted, That no payment of or in respect of any incumbrance which shall be made under the provisions of this Act shall impair any right or equity of any persons out of whose estate such payment shall be made to be reimbursed or indemnified by any person or out of any other land or estate, except so far as the Court, under any special circumstances, shall order.

And be it Enacted, That where any lease subject to any incumbrance shall be proposed or intended or ordered to be sold under the provisions of this Act, it shall be lawful for the Court, upon the application of any persons claiming to be owners of any estate in reversion in the same land (if the Court shall see fit), to direct or to authorize and empower the Master to include in his report, approving a sale, and also to include in the sale such estate in reversion, upon such terms in all respects as the Court, or the Master under the authority of the Court, shall see fit; and in every such case the Court, or the Master under the authority of the Court, shall apportion the purchase money and the expenses as the Court or Master shall see fit; and the assurance to be made under the provisions of this Act shall or may include such estate in reversion so sold as aforesaid, if the Master shall think fit.

And be it Enacted, That if any land or lease to be sold under this Act shall be subject to a lease or under-lease for years or lives comprising other land at an entire rent, it shall be lawful for the Master, before proceeding to a sale, to apportion the rent between the land or lease to be sold, and the remainder of the land subject to such rent, having first caused notice thereof to be given, as well to the tenant as to the person by whom such entire rent shall be payable, and to the person entitled to receive such entire rent, and any persons claiming an interest in the matter may claim to be heard before the Master on the subject of such apportionment: Provided nevertheless, That no apportionment so made by the Master shall be vitiated by any want of notice, or by the absence of any parties, unless the Court, on the application of any person complaining of such apportionment, shall otherwise direct; and after such apportionment, and after such sale shall be completed, the owners of the reversion of the respective lands shall have the like remedies for the apportioned rents respectively as were subsisting for the entire rent before such apportionment; and all the covenants, conditions and agreements of every lease or under-lease, except as to the amount of rent to be paid, shall, as regards the apportioned parts, remain in force in the same manner as they would have done in case no such apportionment had taken place.

39.
No payment in respect of any incumbrance to impair any right of any person out of whose Estate the same shall be made.

40.
Where an Estate shall be ordered to be sold, Court may empower the Master to include in his Report other Interests in the same Estate.

41.
If Land sold shall be subject to a Lease, &c. comprising other Land, Master may apportion the Rent, &c.

42.
No Person
entitled to
Incumbrance
shall be bound
to accept pay-
ment without
Six Months'
Notice, &c.

Provided always, and be it Enacted, That no person entitled to any incumbrance shall be bound to accept payment of the same under this Act until such incumbrance shall be payable; and no person so entitled, who, according to the practice of the Court or the rules of equity, shall be entitled to Six Months' notice of payment, shall be bound to accept payment of his incumbrance under this Act without Six Months' notice; but when such notice shall have been given, no fresh notice shall be necessary if the money is not paid at the day fixed, nor shall any incumbrance, being a re-purchaseable annuity, be re-purchased until the time for re-purchase thereof shall have arrived; and every notice with respect to any incumbrance shall be given in such form, and by and in the name of such person, and to such person, and also at such time, whether before or after an order for sale, as the Master shall direct; and every such notice shall be binding and effectual to all intents and purposes.

43.
Where In-
cumbrance
included in
the Order for
Sale shall not
be payable or
not ascer-
tained, Court
may order
a sum to be
carried by the
Accountant-
General to
the credit of
said, &c.

Provided always, and be it Enacted, That where any incumbrance included in the order for sale shall, for want of any notice or otherwise, not be payable, or where parties entitled to an incumbrance cannot be ascertained, or have not come in and claimed to be paid, it shall be lawful for the Court to order such sum as it shall think fit to be set apart and carried by the Accountant-General to such credit, and to be applied and dealt with as the Court shall direct, in order to provide for any such incumbrance, and for costs and expenses relating thereto.

44.
Pending Pro-
ceedings,
Court may
appoint a
Receiver,
who shall be
subject to
jurisdiction of
the Court.

And be it Enacted, That, pending any proceedings under this Act, it shall be lawful for the Court, on the application of any party interested as owner or incumbrancer, if it shall see fit, to appoint a receiver of any land or lease which shall have been contracted or shall be desired to be sold as aforesaid, and also to discharge such receiver at any time; and that every such receiver shall have all the same powers and authorities, and be subject to the jurisdiction of the Court, and to all subsisting rules and orders of the Court for the regulation of receivers, in like manner and as fully as any receiver appointed in a cause pending in the Court is so subject; and that every such receiver shall account before the Master, and shall pay his balance into the Bank of Ireland, in the name and with the privity and to the credit aforesaid, or otherwise as the Court shall direct, to be paid, applied and dealt with in manner aforesaid, or as the Court shall direct.

45.
Court may
appoint
Guardians of
Infants to act
for them for
the purposes
of this Act.

And be it Enacted, That in every case in which the guardian of an infant would be authorized to do any act or give any consent under the provisions of this Act on behalf of such infant if such infant

infant shall have no guardian, it shall be lawful for the Court under this Act, if it shall think fit, to appoint a guardian of such infant for the purpose of any proceedings under this Act, and also to change such guardian from time to time.

- 5 And be it Enacted, That where any person the committee of whose estate if he were idiot or lunatic would be authorized or directed to do any act or give any consent as aforesaid on his behalf shall be of unsound mind, or incapable of managing his affairs, but shall not have been found idiot or lunatic under an inquisition, or there shall be no committee of the estate, it shall be lawful for the Court, on the application of any person on behalf or as next friend of such person, or on the application of any person interested in any proceedings pending under this Act, to appoint a guardian of such person for the purpose of any such proceedings under this Act, and also at any time and from time to time to change such guardian.

46.
Court may
appoint Per-
sons to act on
behalf of
Lunatics, &c.

- And be it Enacted, That the costs and expenses of and incident to every application for the appointment and change of any guardian under this Act shall be in the discretion of the Court, and shall and may, if the Court think fit, be introduced amongst the costs to be provided for under the general provisions of this Act.

47.
As to the
payment of
Costs.

- Provided always, and be it Enacted, That this Act shall not authorize nor be taken to authorize the presenting of any petition for sale in any case where an incumbrancer shall be in possession of the land which shall be subject to his incumbrance, unless with his consent, nor in any case where the first mortgagee of the land or lease shall have under his security a power of sale which has arisen and may be exercised, unless he shall make or consent to the application, or shall, after being requested by the petitioner so to do, have refused, or for Three calendar Months have neglected to exercise such power of sale, nor in any case where at the time of presenting such petition any suit for foreclosure or redemption or sale of the incumbered land shall be pending, unless with the consent of the parties competent to consent to the dismissal or staying of the suit, and that every such consent shall be stated in the petition for confirming and carrying into effect a contract for sale or for sale as aforesaid; and that in case of such suit it shall be lawful for the Court, under this Act, to give such directions to any parties for discontinuing or staying such suit, and respecting the costs thereof or otherwise, as it shall see fit; and that pending any proceedings for a sale under this Act it shall not be lawful for any owner or person claiming to be owner within the provisions of this Act, or claiming by the act of such owner or person, or by act of law,

48.
No Petition
for Sale
without con-
sent where
an incum-
brancer is in
possession,
or during
pending Suits.

Power to stay
pending Suits.

No Suits to be
commenced
pending pro-
ceedings
under this
Act, without
leave of the
Court.

pending any proceedings under this Act, or any incumbrancer, to commence any proceedings at law or in equity for redemption, foreclosure or sale, without the leave of the Court, to be given under this Act; and that in every case the Court shall have full power to make or grant any order or injunction for staying any proceedings contrary to the provisions of this Act, and for costs relative thereto: Provided always, That this Act shall not authorize any sale or assignment of a lease contrary to the covenants of such lease. 5

49-
Proofs of
Debts, &c.
in a discon-
tinued Suit
may be used
in a Reference
upon a Peti-
tion.

And be it Enacted, That when any petition shall be presented for confirming and carrying into effect a contract for sale or for a sale under this Act of any land or lease in respect of which any suit for foreclosure or redemption or sale shall have been pending, and shall be discontinued or stayed under this Act, it shall be lawful for the Court to order that all such proofs and debts and other proceedings, and such evidence as shall have been taken in the suit, may be adopted and used in the proceedings under such petition, in the same manner as if the same had been originally taken under the reference upon such petition. 10 15

50.
Consent
where neces-
sary may, by
leave of the
Court, be
given sub-
sequently.

Provided always, and be it Enacted, That when any petition for confirming and carrying into execution a contract for sale or for a sale under this Act shall have been presented without the requisite consent, such consent may by leave of the Court be given subsequently, so as to render valid the proceedings under such petition; and that where any such petition shall be held by the Court invalid for want of such consent, it shall be lawful for the Court to make such order against the person who shall have presented the same relative to the costs of any other person of any proceedings had under such petition as the Court shall think fit. 20 25

51.
No Petition
for Sale by
Assignees of
Bankrupts or
Insolvents,
without con-
sent of major
part of
Creditors.

And be it Enacted, That no petition shall be presented for confirming and carrying into execution a contract for sale or for a sale under this Act by any assignee of any bankrupt or insolvent debtor, without the consent thereto of the major part in number and value of the creditors assembled at a meeting duly convened for that purpose first had and obtained: Provided nevertheless, That where any such petition shall have been presented without such consent having been first had and obtained, such consent may by leave of the Court be given subsequently, so as to render valid the proceedings under such petition. 30 35

52.
Annual
Returns to be
laid before
Parliament.

And be it Enacted, That in the month of February in every year, if Parliament be then sitting, or if Parliament be not sitting, then within Fourteen Days after the next meeting of Parliament, a Return shall be laid before both Houses of Parliament, showing the total amount 40

amount or quantity in statute acres of all lands sold under the provisions of this Act during the year ending the Thirty-first day of December then last past, together with a statement of the total annual rent of such lands (so far as the same shall have been shown
 5 in the proceedings), the total amount of incumbrances which affected such lands at the time of the applications for the sale thereof respectively under this Act, the total amount of purchase money for the same, together with the total amount of all such law-costs incurred as shall have been paid out of such purchase money, and
 10 of all other charges and expenses which may have been paid or deducted from the proceeds of such sales under the order of the Court.

And be it Enacted, That this Act shall, except so far as the special provisions of the same otherwise require, extend only to Ireland, and may be amended, altered or repealed by any Act to be passed in this Session of Parliament.

53.
 Act to extend
 to Ireland
 only, &c.